

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 10, 2001

IN RE:

**DOCKET TO ESTABLISH
GENERIC PERFORMANCE
MEASUREMENTS, BENCHMARKS
AND ENFORCEMENT
MECHANISMS FOR BELL SOUTH
TELECOMMUNICATIONS, INC.**

**DOCKET NO.
01-00193**

**ORDER REFLECTING ACTION TAKEN AT MAY 1, 2001
PRE-HEARING CONFERENCE**

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") at a duly noticed Pre-Hearing Conference on May 1, 2001. Director H. Lynn Greer, Jr. presided over the Pre-Hearing Conference as the Pre-Hearing Officer. The Pre-Hearing Conference was convened for the purposes of disposing of all outstanding motions and petitions, establishing a procedural schedule and determining the issues to be considered in this proceeding.

Background

At a regularly scheduled Authority Conference held on February 21, 2001, the Authority voted unanimously to open this docket to develop a common set of performance measurements, benchmarks and enforcement mechanisms to ensure that BellSouth Telecommunications, Inc. ("BellSouth") provides nondiscriminatory access to its network elements as required by the Telecommunications Act of 1996. Concurrent with the establishment of this docket, the Authority adopted, as a base, the performance measurements, benchmarks and enforcement mechanisms ordered in TRA Docket No. 99-00430 (hereinafter "BellSouth/DeltaCom

arbitration”).¹ The Authority appointed Director H. Lynn Greer, Jr. to serve as the Pre-Hearing Officer in this proceeding.

On March 30, 2001, the Pre-Hearing Officer issued a Notice directing all interested parties to file motions to intervene by April 6, 2001. The Notice provided that comments on the following issues be filed on the same date:

1. Should the performance measurements, benchmarks and enforcement mechanisms as adopted be revised? If so, specify what changes should be made and provide supporting rationale.
2. Should a change control process be considered in this docket? If so, provide supporting rationale and details of the process you recommend.

Numerous parties sought to intervene in this docket. AT&T Communications of the South Central States, Inc., (“AT&T”) filed a Petition to Intervene on March 29 2001. DIECA Communications d/b/a COVAD Communications Company, Birch Telecom of the South, Inc., BellSouth, ATM-Discount Communications, Inc., XO Tennessee, Inc. and Southeastern Competitive Carriers Association (“SECCA”) filed petitions to intervene on March 30, 2001. MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. filed petitions to intervene on April 2, 2001. ACCESS Integrated Networks, Inc. (“ACCESS”) filed a Motion to Intervene on April 4, 2001. ICG Communications, Inc., the Association of Communications Enterprises, Inc., Time Warner Telecom of the Mid-South, L.P., and Mpower Communications Corporation sought intervention on April 6, 2001. Finally, NewSouth Communications filed a Petition to Intervene on April 17, 2001.

ACCESS filed a Motion to Accept Late-filed Comments on April 16, 2001. On April 30, 2001, a Joint Petition of Time Warner Telecom of the Mid-South, L.P. and U.S. LEC of

¹ *Petition for Arbitration of ITC/DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.*

Tennessee, L.L.C. to Include Service Quality Measures for Special Access Service was filed.

Pre-Hearing Conference

The parties in attendance at the May 1, 2001 Pre-Hearing Conference included:

BellSouth Telecommunications, Inc. – **Guy M. Hicks, Esq.**, 333 Commerce Street, 22nd Floor, Nashville, TN 37201-3300 and **R. Douglas Lackey, Esq.**, 675 West Peach Street, Suite 4300, Atlanta, GA 30375;

AT&T Communications of the South Central States, Inc. – **Bill Prescott, Esq.**, 1220 Peachtree St., N.E., Room 8990, Atlanta, GA 30309;

Time Warner Telecom of the Mid-South, L.P. and NewSouth Communications – **Charles B. Welch, Jr., Esq.**, Farris, Mathews, Branan, Bobango & Hellen, 618 Church Street, Suite 300, Nashville, TN 37219; and

Southeastern Competitive Carriers Association – **Henry Walker, Esq.**, Boulton, Cummings, Connors & Berry, 414 Union Street, No. 1600, P.O. Box 198062, Nashville, TN 37219-8062.

The following parties were not present at the Pre-Hearing Conference, but participated telephonically:

AT&T Communications of the South Central States, Inc. - **Cheryl Bursh**, District Manager, Law and Government Affairs, 1220 Peachtree St., N.E., Room 8056, Atlanta, GA 30309;

MCIWorldCom – **Susan Berlin, Esq.**, 6 Concourse Parkway, Atlanta, GA 30328.

1. Petitions to Intervene and Pending Motions

During the Conference, the Pre-Hearing Officer addressed all outstanding motions and petitions. Initially, the Pre-Hearing Officer asked whether there were any objections to the petitions to intervene. No objections were asserted. The Pre-Hearing Officer also addressed the Petition to Intervene filed by NewSouth Communications on April 17, 2001, inquiring whether any party objected to the intervention. There were no objections. Absent objections and given that that the petitions to intervene met the requirements of Tenn. Code Ann. § 4-5-310, the Pre-Hearing Officer granted all petitions to intervene.

Next, the Pre-Hearing Officer addressed ACCESS' Motion to Accept Late-filed Comments. No objections to the Motion were asserted by the parties. The Pre-Hearing Officer granted the Motion to Accept Late-filed Comments.

The Joint Petition of Time Warner Telecom of the Mid-South, L.P. and U.S. LEC of Tennessee, L.L.C. to Include Service Quality Measures for Special Access Service was then addressed. After observing that this type of request was more appropriately asserted as a suggestion in direct testimony, the Pre-Hearing Officer admonished the parties to suggest specific performance measurements in a format consistent with those adopted in the BellSouth/DeltaCom arbitration. The Pre-Hearing Officer also stated that the direct testimony should contain supporting rationale for any suggested performance measurement, benchmark or enforcement mechanism. Based on these findings and conclusions, the Pre-Hearing Officer dismissed the motion.²

2. Procedural Schedule

The Pre-Hearing Officer proposed a procedural schedule and requested comments from the parties thereon. After discussion, the following schedule was established.

- Discovery Requests shall be filed with the Authority and served on all parties no later than **4:30 p.m., Monday, May 7, 2001**. Discovery Requests shall conform to Tenn. Comp. Rules & Reg. 1220-1-2-.11(5) and be served by hand-delivery or facsimile on the date of filing.
- Objections to Discovery Requests shall be filed with the Authority and served on all parties no later than **4:30 p.m., Friday, May 18, 2001**. Objections to Discovery Requests shall be served by hand-delivery or facsimile on the date of filing.
- Responses to Discovery Objections shall be filed with the Authority and served on all parties no later than **4:30 p.m. Wednesday, May 23, 2001**. Responses to Objections to Discovery Requests shall be served by hand-delivery or facsimile on the date of filing.

² Moreover, U.S. LEC did not file a motion to intervene in this docket.

- Responses to Discovery Requests shall be filed with the Authority and served on all parties no later than **4:30 p.m., Monday, June 18, 2001**. Responses to Discovery Requests shall be served by hand-delivery or facsimile on the date of filing.
- Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **4:30 p.m., Monday, July 9, 2001**. Pre-filed Direct Testimony shall be served by hand-delivery or facsimile on the date of filing.
- Pre-filed Rebuttal to Direct Testimony shall be filed with the Authority and served on all parties no later than **4:30 p.m., Friday, August 3, 2001**. Pre-filed Rebuttal Testimony shall be served by hand-delivery or facsimile on the date of filing.
- The Hearing is set for **9:00 a.m., Monday, August 20 through Friday, August 24, 2001**.

3. Judicial Notice and Issues for Consideration

The Pre-Hearing Officer next addressed the issue of taking judicial notice of the record in the BellSouth/DeltaCom arbitration. No objections were asserted. Pursuant to Tenn. Code Ann. § 65-2-109(4), the Pre-Hearing Officer took judicial notice of the record in TRA Docket No. 99-00430, the BellSouth/DeltaCom arbitration.

The Pre-Hearing Officer asked the parties to comment as to whether issues in addition to those previously noticed should be included in this docket. The parties did not assert that additional issues needed to be included. The Pre-Hearing Officer also inquired whether the following issue would be appropriate for inclusion in this proceeding:

Should a change control process be considered in this docket? If so, provide supporting rationale and details of the process you recommend.

BellSouth objected to the inclusion of this issue. AT&T asserted that change control was an appropriate issue to be considered in this docket. The Pre-Hearing Officer stated that further consideration of the above mentioned change control issue would slow the progress of this docket and determined that said issue should not be considered in this proceeding.

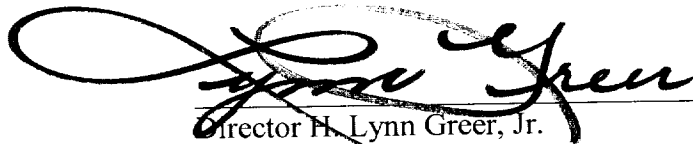
Finally, the Pre-Hearing Officer encouraged the parties to file, promptly, joint stipulations on those performance measurements adopted in the BellSouth/Deltacom arbitration to which they had no objection.


IT IS THEREFORE ORDERED THAT:

1. The Motions to Intervene filed by ACCESS Integrated Networks, Inc., the Association of Communications Enterprises, Inc., AT&T Communications of the South Central States, Inc., ATM-Discount Communications, Inc., BellSouth Telecommunications, Inc., Birch Telecom of the South, Inc., Brooks Fiber Communications of Tennessee, Inc., DIECA Communications d/b/a COVAD Communications Company, ICG Communications, Inc., MCImetro Access Transmission Services, LLC, Mpower Communications Corporation, NewSouth Communications, Southeastern Competitive Carriers Association, Time Warner Telecom of the Mid-South, L.P. and XO Tennessee, Inc. are granted. The parties may participate in the proceeding as their interests may appear and receive copies of any notices, orders or other documents herein.
2. The Motion to Accept Late-filed Comments filed by ACCESS Integrated Networks, Inc. is granted.
3. The Joint Petition of Time Warner Telecom of the Mid-South, L.P. and U.S. LEC of Tennessee, L.L.C. To Include Service Quality Measures for Special Access Service is dismissed.
4. The procedural schedule as set forth in this Order is hereby adopted.
5. Judicial Notice of the record in the BellSouth/DeltaCom arbitration (Docket No. 99-00430, *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth*

Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996), as amended at the May 1, 2001 Arbitration Meeting, is taken.

6. The issue of change control will not be considered in this proceeding.
7. Any party aggrieved by this Order may file a Petition for Reconsideration pursuant to Tenn. Code Ann. § 4-5-317 with the Pre-Hearing Officer within fifteen (15) days of the entry of this Order.
8. Any party aggrieved by this Order may file a Petition for Appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days of the entry of this Order.


Director H. Lynn Greer, Jr.
Pre-Hearing Officer


K. David Waddell, Executive Secretary